

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
Portland Division

THE O.N. EQUITY SALES COMPANY

Civil No. 10-CV-1426-ST

Plaintiff,

ORDER

v.

ESTATE OF MARY T. GATTUCCIO  
PENCE,

Defendant.

DAYNA CHRISTIAN  
Bullivant Houser Bailey PC  
300 Pioneer Tower  
888 S.W. Fifth Avenue  
Portland, OR 97204-2089  
(503) 228-6351  
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Attorneys for Plaintiff

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MARSH, Judge.

On February 4, 2011, Magistrate Judge Stewart filed a Findings and Recommendation that this matter should be dismissed pursuant to the court's inherent discretionary powers under 28 U.S.C. § 2201(a) and Fed. R. Civ. P. 1. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. See 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Defendant has filed timely objections. After *de novo* review, I find no error in Judge Stewart's conclusion that "this case fits the bill of a classic 'reactive declaratory action' that 'federal courts should decline to entertain.'" Government Emps. Ins. Co. v. Dizol, 133 F.3d 1229, 1223 (9th Cir. 1998).

Accordingly, I ADOPT the Findings and Recommendation (#17) of Magistrate Judge Stewart. Defendants' Motion to Dismiss (#7) is **GRANTED**.

IT IS SO ORDERED.

DATED this 15 day of March, 2011.

/s/ Malcolm F. Marsh  
Malcolm F. Marsh  
United States District Judge